

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14252, of 1737 Limited Partnership, as amended, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against permitting open parking spaces to be located less than ten feet from a wall of a multiple dwelling (Paragraph 7205.22), from the prohibition against permitting a driveway providing accessibility to parking spaces to measure less than fourteen feet in width (Sub-section 7206.7) and the open court width requirements (Sub-section 3306.1) for a proposed two-story addition to an existing apartment house in an R-5-C District at premises 1737 New Hampshire Avenue, N.W., (Square 154, Lot 811).

HEARING DATE: February 20, 1985
DECISION DATE: March 6, 1985

FINDINGS OF FACT:

1. At the public hearing, several unit owners of the Portsmouth, a condominium located immediately south of the subject site, requested that the hearing be continued or that the record be left open for Advisory Neighborhood Commission 2B to reconsider its position and file a second report. There were further contentions that the application as advertised was unclear as to the nature of the two additions to the subject building and that without the full understanding of the proposal the neighbors and the ANC were not given sufficient notice on which to comment. Counsel for the applicant reported that he and the architect had appeared before the ANC before the ANC took any vote and that the plans were on file in the public record reflecting the exact nature of the proposal. The Chairperson ruled that the ANC and the public had sufficient information before them and that the BZA had no jurisdiction over the internal matters of the ANC. As to the issue of the record being left open, the Chairperson deferred a ruling until later in the hearing as the merits of the application unfolded. At the end of the public hearing, the Chairperson ruled that the record was closed except for the submission of proposed findings of fact and conclusions of law.

2. As advertised, the application had also sought a variance from the prohibition against open parking spaces being located less than ten feet from a wall of a multiple dwelling. As of March 1, 1985, the effective date of amendments to the Zoning Regulations concerning parking,

that provision of the Zoning Regulations was deleted. The Chairperson permitted the application to be so amended since the application would not be decided until March 6, 1985.

3. The subject premises is located on the east side of New Hampshire Avenue, N.W., between R Street on the south and S Street on the north. The site is in an R-5-C District and is known as premises 1737 New Hampshire Avenue, N.W.

4. The subject lot has an area of 3,691 square feet. It has a frontage of approximately thirty-five feet on New Hampshire Avenue, N.W.

5. The subject site is improved by a four story brick structure with an English Tudor style facade. The structure, built in 1922, is currently vacant and has been so for many years, due to structural defects within the building. It was previously used as an apartment building containing nine units.

6. The lot currently is also improved by a three-car garage located behind the apartment building. In addition, there are three open parking spaces in front of the building and four to six open spaces available in back. All of these spaces are currently rented to or utilized by neighborhood residents.

7. The applicant intends to use the proposed structure as a twenty-one unit rental apartment house. Of these units, eighteen would be studio apartments. The average floor area per unit will be approximately 600 square feet. The applicant proposes to provide a total of four parking spaces.

8. The subject lot is also currently improved by a common driveway on its northern boundary, which is shared with the condominium apartment building next door at 1751 New Hampshire Avenue. The portion of the existing driveway that is on the subject lot is 7.3 feet wide. The applicant proposes to eliminate 4.3 feet of this driveway by extending the north side of the apartment building. A joint easement with the condominium next door would provide access to parking spaces on the subject site and to common elements of the condominium. The proposed driveway would be thirteen feet wide.

9. The existing structure has a nonconforming side yard on its north side that measures approximately three feet in width. The applicant proposes to convert this side yard to a court and extend the court one more level in conjunction with its overall expansion and renovation plan.

10. The structure occupies seventy-five percent of the lot. The existing gross floor area is 7,035 square feet.

11. The applicant proposes to build a five story addition to the structure in the rear and a one story addition in the front in conjunction with a complete building renovation. The structural defects in the building will be repaired if the application is approved.

12. The gross floor area of the proposed addition is 5,880 square feet, for a total gross floor area of 12,915 square feet. The floor area ratio will be 3.5, which is the maximum permitted in the R-5-C District. Four parking spaces are required and four parking spaces are provided.

13. The subject site is located within the Dupont Circle Historic District and is subject to D.C. Law 2-144. The Historic Preservation Review Board has given conceptual design approval to the project.

14. In order to renovate the property and return it to active use, the applicant requests two variances. The first variance is for relief from the requirement of Sub-section 7206.7 that a driveway providing access to required parking spaces measures at least fourteen feet in width. The second variance is from the open court width requirements of Sub-section 3306.1, that an open court must be at least six feet wide.

15. As to the variance from the driveway width, the applicant proposes to share a common driveway with the adjacent property to the north. The driveway measures approximately thirteen feet in width. Therefore the requested variance is one foot.

16. The applicant's portion of the driveway will be three feet in width, while the adjacent property owner at 1751 New Hampshire Avenue intends to provide ten feet. The applicant proposes to ensure the existence of the thirteen foot common driveway through the execution of a common driveway easement with the owner of the adjacent property to the north. The easement agreement will be reviewed by the Zoning Regulations Division and the Office of the Corporation Counsel. Also, the District of Columbia will be a third party beneficiary to the easement to ensure proper enforcement.

17. The subject property has an existing driveway porte cochere which is only 7.3 feet in width. This neither complies with the Zoning Regulations nor is wide enough for present day vehicular accommodation. The applicant proposes to convert this area to be the main entrance of the structure.

18. When the structure was built, a three foot court was constructed, as there were no regulations regarding open courts at that time. The structure in its present

configuration is, therefore, nonconforming. The present court width requirement is a minimum of six feet.

19. The proposed addition to the building will not increase the degree of nonconformity. Attempts to comply with the Regulations by either filling in the existing court or by setting back the addition to meet the width requirements would be both costly and difficult to accomplish. Either alternative is also unlikely to receive a favorable reaction from the Historic Preservation Review Board. The proposed roof line will become active in a similar style of architecture as the facade.

20. Because of the lot shape and the existing configuration of the historic structure, any addition to the existing building would necessitate area variance relief from the minimum open court width requirements.

21. Because the property is a historic structure, the applicant could not raze the existing building in order to rebuild in full code compliance. It was the applicant's intention and preference to restore and renovate the subject structure rather than to demolish it.

22. The proposal furthers important city housing policies by returning a vacant structure to active use with twenty-one residential rental units. This is important to the city where rental housing is in short supply. The project will also preserve a historic structure in accordance with city preservation goals.

23. Advisory Neighborhood Commission 2B, by letter dated February 13, 1985, stated that it adopted a resolution to support the application. The ANC stated that the project would be a tasteful and attractive addition to the housing stock of the neighborhood. The Board so concurs.

24. The Dupont Circle Citizens Association, through a representative at the public hearing, testified in support of the application. The Association based its support upon the fact that a historic building will be preserved and will provide needed rental housing. The Association requested that the number of units permitted not exceed the number of parking spaces required. The Board notes that, under the Zoning Regulations, the applicant need provide only four on-site parking spaces for the proposed twenty-one units.

25. The president of the condominium association of the structure to the north at 1751 New Hampshire Avenue testified on behalf of the association in support of the application. He affirmed that his building had entered into a joint driveway easement with the applicant. He further testified that the proposal will improve the safety of the two properties by returning an active use to the subject

site and through the demolition of an existing dilapidated garage which attracts trespassers and is a nuisance. Finally, he stated that the proposed architectural design is sympathetic with the neighborhood.

26. Several residents of the neighborhood testified in support of the application, stating that they welcomed the restoration of the subject site and its return to a viable use.

27. Representatives of the Portsmouth, the adjacent condominium south of the subject site at 1731 New Hampshire Avenue, testified in opposition to the application. The basis for their opposition was the detrimental effect of locating parking spaces in close proximity to the basement apartments at the Portsmouth, the impact of the proposed addition on the fire safety of the Portsmouth, the loss of sublight to the residents of the Portsmouth, the density of the subject structure creating overcrowded living conditions, the effect of the project on neighborhood parking conditions, and that the Portsmouth did not have notice of the ANC public meeting or the Dupont Circle Citizens Association meeting at which time the ANC and the Association voted to make a favorable recommendation.

28. Other neighborhood residents testified in opposition for similar reasons as stated above.

29. Numerous letters were filed in the record opposing the application. A majority of these letters were sent by residents of the Portsmouth and residents on 17th Street, the rear of whose property faced the present court.

30. The Portsmouth Condominium directly abuts the south side of the existing structure on the subject site. The Portsmouth is a six-story building with five units on each floor and four units on the basement level. Two units on each floor, as well as a common stairwell that reaches from the basement to the sixth floor, face the subject lot. Each of the six floors has eight windows facing the proposed development. In addition, there are at least four windows in the basement units facing the proposed development.

31. The opposition contended that the addition extending twenty-four feet from the rear of the structure would create a nonconforming, poorly ventilated enclosed courtyard on the north side of the Portsmouth. In particular, it would decrease the amount of light and air available to fourteen units of the Portsmouth, affecting approximately twenty-five residents. The south wall of the proposed structure would be only five to six feet from the fifty-two windows of the units on the north side of the Portsmouth. The access of the residents of those units to light and air would be severely restricted by the proposed development.

At least seven units that currently receive direct morning, afternoon or evening sunlight would be deprived of this light source.

32. It was also contended that the condominium located behind the subject lot at 1726 17th Street, N.W., would suffer a severe reduction in light and air as a result of the proposed development.

33. It was further contended that the proposed development would have an adverse impact on the neighborhood in that it would impose an unreasonable burden upon an already strained parking situation. On-street parking in the neighborhood is scarce, and the residents experience a daily search for available parking spaces. Vehicular traffic and parking congestion are increasing as the area develops and more vacant buildings are renovated and converted to residential property. The population of the neighborhood has increased substantially in recent years, and more cars are being brought into the area by residents and commuters. Cars are frequently double parked or parked illegally in no parking or restricted parking areas in the vicinity of the proposed development. The St. Charles Hotel, located at 1731 New Hampshire Avenue, adds to the congestion. Cars, taxi cabs and buses frequently stop or park in the vicinity of the hotel to load and unload passengers.

34. It was argued that the proposed development would aggravate this situation by reducing the number of off-street parking spaces available on the subject lot from approximately eleven to four. While decreasing the number of parking spaces available, the applicant proposes to construct twenty-one units on the subject lot, which would result in a sharp increase in demand for on-street parking.

35. It was further contended that the neighborhood already has a high number of rental units available, particularly along the 17th and 16th Street corridors located immediately to the east of the subject site. In addition, a considerable number of units in the Portsmouth and other nearby condominiums are currently rented out by their owners. Accordingly, there was no need for the proposed twenty-one units.

36. It was further contended that the narrowness of the proposed driveway could adversely affect neighboring properties. The applicant has not shown that fire and rescue vehicles would be able to use this driveway to gain access to the back of the subject lot in the event of fire in the proposed development or one of the neighboring buildings. Moreover, as a result of the overall renovation and expansion plan, elevated rescue of residents of the north side of the Portsmouth or the south side of the

proposed building would be impossible because of the extreme closeness of the two buildings.

37. The Board, in responding to the concerns of the opposition finds as follows:

- A. The requirement that parking spaces not be located within ten feet of a wall of a multiple dwelling no longer exists in the Zoning Regulations. When it was in effect, this provision only related to walls of the subject site and not those of adjacent structures. The area proposed for parking is presently used in an identical manner. The impact, therefore, will not change. In order to protect the adjacent neighbors, however, the Board will require, as a condition to this order, that the applicant construct a masonry wall to shield residents of the Portsmouth from parking spaces on the subject site.
- B. The concern about fire safety is not a zoning issue. Such concern is not properly before the BZA. Other Departments of the District of Columbia Government have jurisdiction over fire safety matters.
- C. The subject site may not be used to provide required light and air for the Portsmouth or other properties. The Building Code requires light and air to come from the lot upon which the building to be served is located. The Board finds that no areas of relief are required for the subject structure on its southern boundary which borders the Portsmouth lot. An addition could be built on this property line as a matter-of-right.
- D. The applicant testified that the average floor area per unit will be approximately 600 square feet. The Board finds that the size of the twenty-one units are of a typical size for the neighborhood and will not create objectionable living conditions.
- E. The applicant intends to provide four full size off-street parking spaces which meet the requirements of the Zoning Regulations. The Board finds, however, that the applicant can provide six compact size parking spaces on the site and will condition the order on the parking scheme which depicts this layout. The Board finds that this application will not appreciably exacerbate existing parking conditions in the neighborhood.

- F. There was no evidence in the record to suggest that the ANC meeting was not conducted pursuant to its standard practices. No representative of the ANC appeared at the hearing to dispute the written resolution that was timely filed with the Board. The Board finds that it does not have the authority to consider the internal operating procedures of the ANC as to whether the ANC properly gave notice of the meeting at which this application was considered. The Board notes that the report of the ANC indicates that the matter was taken up at a duly called meeting. There was further no evidence that the representative of the DCCA did not properly present the position of the DCCA, or that that position was improperly arrived at.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking two area variances. The granting of these area variances requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the site is affected by several unusual and exceptional circumstances. The Board notes that the site is developed with an existing nonconforming structure located in a historic district. The structure was built in 1922 before the adoption of the current Zoning Regulations and occupies approximately seventy-five percent of the lot. Due to the location and shape of the existing structure on the lot, it is impossible to strictly comply with the Regulations, given the fact that the State Historic Review Board would be unlikely to approve the demolitions and/or alterations that would be required to comply with the Zoning Regulations. The Board further concludes that a strict application of the Zoning Regulations would impose a practical difficulty upon the applicant and that the elements necessary to grant the area variances are inherent in the property.

The Board further concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. The Board also concludes that it has accorded to the ANC the "great weight" to which it is entitled. accordingly, it is ORDERED that the "great weight" to which is entitled. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:


1. The applicant shall provide six compact size parking spaces on site as shown on plan marked Exhibit No. 42 of the record.

2. The applicant shall construct a brick wall along the southern property line from the ground to the second story level of the addition.
3. The wall shall be framed with brick on both sides to match the color of the addition.

VOTE: 3-1 (John G. Parsons, William F. McIntosh and Carrie L. Thornhill to grant; Charles R. Norris opposed by proxy to the wall condition; Douglas J. Patton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

15 JUL 1985

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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